IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 31ST OCTOBER 2006 / 9TH KARTHIKA 1928

ST.Rev..No. 491 of 2004()

TA.267/2003 of S.T.A.TRIBUNAL,ADDL.BENCH,KZD.

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REVISION PETITIONER/APPELLANT/APPELLANT/ASSESSEE

A.P.BABY, HILL TOP TRADE LINKS,
MANANTHAVADY, WAYANAD DISTRICT.

BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)
SMT.MERLIN MATHEW

RESPONDENTS: RESPONDENT/REVENUE

STATE OF KERALA.

BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 31/10/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR &
K.M.JOSEPH, JJ.

S.T.Rev. NO.491 OF 2004

Dated this the 31st day of October, 2006

JUDGMENT

C.R.

Ramachandran Nair,J.

This Tax Revision is filed against the order of the Tribunal holding that the products sold by the petitioner, citrinella oil and citridora oil, are perfumeries falling under Entry 144 of the First Schedule to the KGST Act taxable at the rate of 20 per cent. The contention of the petitioner was that the item is not covered by any entry in the First Schedule to the Act, and so much so, it is liable to be assessed under the residuary entry at the rate of 8 per cent. The assesment involved is Central Sales Tax assessment for the year 1999-2000 and the dispute on rate of tax cropped up only because the petitioner has not produced C Forms for inter-State sales made during the year. It is to be noted that all the three authorities below, including the Tribunal held that the products sold by the petitioner are perfumeries falling under Entry 144 of the First schedule to the KGST

Act. It is against this order of the Tribunal confirming the assessment that the petitioner has filed this Revision.

2. Before proceeding to consider the classification of the item, we have sought clarification about the nature of the product from counsel for the petitioner. It is conceded that the products, namely, Citridora oil and Citrinella oil are both produced from a tree which is a variety of eucalyptus. Unlike sandal wood oil which is extracted from the sandalwood, these two varieties of oils are extracted from leaves of a particular variety of eucalyptus tree. In order to consider the issue, we have to necessarily refer to the relevant entry, namely, Entry 144 of the First Schedule to the Act, which is extracted hereunder for easy reference:

> 144. Shampoo, Talcum Powder including medicated talcum powder, sandal wood oil, ramachaoam oil, cinnamon oil other perfumeries and cosmetics not falling under any other entry in this schedule.

3. The items involved are certainly not specifically covered by the above Entry. However, the question is whether these items would come within the meaning of "other perfumeries" as contained in the Entry. While the case of the petitioner is that items are not "perfumeries" in as much as they are not capable of being used as

perfumery as such, the department's case is that items are oils which by virtue of it's aroma are used to make perfumery and is similar to "sandalwood oil", "ramachaoam oil", "cinnamon oil", etc which are specifically covered by the Entry 144. Since similar items are also covered by the entry, we have to consider the meaning of "perfumery" and examine whether the items are come under it.. The Encyclopaedia Americana, International Edn., (1979), Vol. 21, describes "perfumes" and "perfumery" as follows:

> Perfumes are substances or preparations which emit an agreeable odor. In alcoholic solution, they are extensively used directly on the person or on garmets, and incorporated into all types of cosmetics. Perfumes are also employed to give more agreeable odors to many industrial products. The art of producing perfumes is called perfumery.

Since perfumery is an art of producing perfumes, we are of the view that items used for the manufacture of perfumes would certainly come within the scope of "perfumeries", more so because only such substances are named in the Entry. From the description of ingredients used in making perfumes given under the same chapter heading of the Encyclopaedia Americana, we find that essential oils used for making perfumes are taken from flowers, wood, plant, leaves, stems, barks, woods, roots, seeds, etc. and the commonly used essential oils are

citronella, lemongrass, rosewood, peppermint, sandalwood, clove, etc. From the above it is clear that citrinella oil, which is the petitioner's product, is a known perfumery used for making perfume like sandalwood oil which is commonly used for making perfumes. It is pertinent to note that some of the essential oils used for making perfumes are specifically covered by the Entry, which are sandalwood oil, ramachaoam oil, and cinnamon oil. After specifying these items, what is further provided is "other perfumeries". This only means that the three oils referred to above are treated by the legislature as answering the description of perfumeries and the entry covers other perfumeries also which means similar products like the three items of oils mentioned therein are also covered by it. Since the products sold by the petitioner are oils which are very similar to the other three items mentioned in the Entry, we are of the view that the item rightly falls under the description "perfumeries" in the Entry.

4. Counsel for the petitioner cited the decision of this Court in PUNJAB AROMATICS V. STATE OF KERALA (1991) 1 K.L.T. 404 and that of the Supreme Court in PRADEEP AGGARBATTI V. STATE OF PUNJAB , (1997) 107 STC 561 in support of his contention that the products sold by the petitioner are not perfumeries.

We are unable to agree with this contention for the reason that the Entry interpreted by this Court does not cover the word "perfumeries" but the item covered was only perfume, which being the final product, this Court held that crude sandalwood oil would not come within its meaning. Similarly, the decision of the Supreme Court relied on by the petitioner applies to Aggarbattis. Even though the Supreme Court has held that Aggarbatti is not a perfumery that will not help the petitioner because the entry in the Kerala Act covers various kinds of oils used for making purfumes and the words "other perfumeries" used thereafter only intended to cover similar items which were not specified in the Schedule. In this view of the matter, we do not think the contention of the petitioner based on the above decisions can be accepted. We therefore uphold the order of the Tribunal and dismiss the Tax Revision.

(C.N.RAMACHANDRAN NAIR)
Judge

(K.M.JOSEPH)
Judge